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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,540	02/20/2004	John T. Pienkos		7442
7590	04/28/2008		EXAMINER	
JOHN T. PIENKOS 2512 W. MARGARETTA CT. GLENDALE, WI 53209			WEINSTein, STEVEN L	
			ART UNIT	PAPER NUMBER
			1794	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/783,540	<b>Applicant(s)</b> PIENKOS, JOHN T.
	<b>Examiner</b> Steven L. Weinstein	<b>Art Unit</b> 1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 February 2008 and 13 August 2007.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3,5-11,13-16 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,5-11,13-16 and 21-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-3, 5-11, 13-16 and 21-26 are rejected under 35USC112,1<sup>st</sup> para. for containing New Matter.

It does not appear that the newly added recitations, to the independent claims, that the pocket has a length dimension and a width dimension that are substantially greater in extent than the depth dimension, is necessarily and inherently supported by the specification as originally filed, and the amendment does not point to the specification for support for this language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-11, 13-16 and 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kienle (DE'385) in view of Woods et al (6,423,357), Potter (3,384,495), Hsieh (2004/0018276), Kojima (D405,936), the Gordon patents, (D195,498), (D194,780), (D193,542), and (D193,541), Seyfert (D309,210), Gansle (D67,885), Hreschak (D212,070), Teras (2002/0132029), Maric (2006/0040020), Odom (2004/0011223), Burt (1,718,997) and Kaufman (3,331,626), further in view of applicant's admission of the prior art.

In regard to claim1, Kienle discloses a food product comprising a pocket formed from dough (#1), a portion of a food stuffing material (#2) captured within the pocket and a protrusion (#3) coupled to the pocket, wherein the protrusion is capable of being grasped and, when so grasped, the pocket is capable of being supported by the protrusion. As an example, column 2, para.1 reads: "At one end there is a casing(1) in the form of a corner(3) with no filling over a strand(2) in order to facilitate holding with the hand during consumption". Thus, Kienle teaches both applicant's problem and applicant's solution. That is, Kienle teaches if one desires to hand hold a composite food material (i.e., a food material comprising two or more components or phases), one should provide the food product with an extension or projection of the outer component to form a handle. Claim 1 now recites relative length, width and depth dimensions, and an extent of the protrusion relative to the pocket. Once it was known to provide a food product, including one that is a composite food product, comprising a dough enclosed, food stuffing material, the particular dimensions of the food product, including the protrusion, is seen to have been an obvious result effective variable and/or an obvious matter of choice and/or design. Applicant's admission of the prior art discloses that he is employing conventional dough based, pocketed products, such as pierogis, ravioli and calzones, so that the dimensional relationships are conventional and thus read on the newly recited dimensions. In fact, a product such as a calzone has dimensions more like Kienle's product, which further evidences the dimensional relationships are conventional and thus obvious. Note, too, that Kienle is not being employed in the rejection as a reference that anticipates the claim and its dimensions, but rather as part

of a combination of references, including applicant's admission of the prior art which evidences the fact that the dimensions would have been obvious. Since Kienle discloses hand-holding the food product by the protrusion, the particular area for grasping would have been an obvious routine determination. Woods et al, Potter et al, Hsieh, Teras et al, Maric, Kojima, Gordon ('498), Gordon ('780), Gordon ('542), Gordon ('541), Seyfert ('210), Gansle, Odom, Hreschak, Burt and Kaufman are all relied on as further evidence that it was notoriously conventional to provide edibles with either integral or attachable, edible handles in the form of all types of projecting members. As for the extent and size of the projection, since Kienle, and the art taken as a whole, discloses edible, inedible and even edible/inedible composite handles, associated with food products to allow one to manipulate the food product, the particular dimension and extent of the handle, vis-a-vis the rest of the product, would have either been an obvious result effective variable, routinely and obviously determinable or an obvious matter of choice and/or design.

In regard to claim 2, since Kienle discloses that the projection is to be held by the hand, the projection would inherently be sufficiently large to be grasped by at least the recited fingers. In regard to claim 3, Kienle teaches that the protrusion has little, if any, food stuffing material therein. In regard to claim 5, the protrusion of Kienle is integrally formed. In regard to claim 6, which recites two layers, although it is not clear if the protrusion of Kienle is two layers or not, whether the protrusion is two layers or not is a function of how it is made, and not seen to have patentable significance in the final product. The art taken as a whole teaches the conventionality of protrusions made from

two layers as evidenced, e.g., by Hreschak. Also, applicant's admission of the prior art discloses it was conventional to make composite foods wherein two or even four layers are involved. To modify Kienle and employ two or more layers would therefore have been an obvious matter of choice and/or design. In regard to claim 7, Kienle discloses cooking the protrusion. In regard to claim 8, Kienle discloses that the dough based covering has an end "at least" at one side, which is unfilled and projects beyond the filling. Thus, Kienle discloses there can be more than one protrusion. In regard to claim 11, the art taken as a whole discloses edible or inedible, or edible/inedible combinations, as projections for hand-holding, and to therefore modify Kienle for its art recognized and applicant's intended function and provide a support beam, whether edible or inedible, would therefore have been obvious as is the particular conventional food product employed as the support element. In regard to claim 13, the particular conventional composite food product employed is seen to have been an obvious matter of choice. Claims 14, 15, and 21-26 are rejected for the reasons given above. For example, as noted above, applicant's admission of the prior art discloses that it was conventional to employ plural layers, including four layers, in a composite food product. Finally, claim 9 recites that the protrusion is capable of being grasped by a clip and claims 10 and 16 appear to positively recite the clip. In regard to claim 9, the protrusion of Kaufman would appear to be capable of being grasped by some sized clip. In any case, as evidenced by Kaufman, it was conventional in the art to employ a flexible, plastic holder (i.e., a clip), which is capable of grasping a food product to be held, and is also capable of being grasped by the thumb and index finger, so that the hand does not

directly touch the food and get soiled. To modify the combination and provide a structure, which would allow one to hold the protrusion without directly touching the protrusion, would therefore have been obvious.

All of applicant's remarks have been fully and carefully considered but are not found to be convincing, essentially for the reasons of record and the remarks above. The remarks are directed do differences in shape or dimensions which, as noted above, would have been obvious in view of the art taken as a whole. It is not convincing to argue that Kienle does not disclose the particular dimensional relationship or the particular orientation of the protrusion/handle. Kienle is combined with a number of references as part of an obvious rejection under 35USC103. Patentability is predicated on what the art taken as a whole teaches at the time of applicants invention. If Kienle had taught all of the recitations, then the rejection would have been in view of Kienle alone, under 35USC102, anticipation. Also, since Kienle discloses the generic concept of providing a composite product with an extension to be used as a handle, it would have been obvious to apply this teaching to any other conventional composite product. Also, since the intended function of the projection in the prior art is to use it as a handle for grasping, it would have been obvious to increase the size or the extent of the projection to make grasping easier. Also, although the art taken as a whole discloses multiple layers for composite materials, it is further noted that, it is, of course, a basic physical principle that increasing the thickness of a material increases its strength, so that there would be no unexpected result in employing multiple layers.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/  
Primary Examiner, Art Unit 1794